



Ninety-Seventh Legislature - Second Session - 2002
Committee Statement
LB 863

Hearing Date: January 22, 2002

Committee On: Banking, Commerce and Insurance

Introducer(s): (Byars)

Title: Change provisions relating to regulation and licensure of real estate professionals

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

7	Yes	Senators Landis, Tyson, Aguilar, Bruning, Jensen, Kremer, Smith
	No	
	Present, not voting	
1	Absent	Senator Quandahl

Proponents:

Senator Dennis Byars
Walter Radcliffe
Les Tyrrell, Director
Robert Moline
Mike Riedmann

Representing:

Introducer
NE Realtors Association
NE Real Estate Commission
Self
NE Realtors Association

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

OVERVIEW

This bill would amend three bodies of statute relating to real estate licensees: (1) written seller disclosures (section 76-2,120); (2) agency relationship statutes (sections 76-2401 to 76-2430); and (3) the Nebraska Real Estate License Act (sections 81-885.01 to 81-885.55).

SUMMARY

The bill would provide, section by section, as follows:

WRITTEN SELLER DISCLOSURE STATEMENTS

Section 1 would amend section 76-2,120 which currently requires each seller of residential real property to provide the purchaser with a written disclosure statement of the real property's condition. This section would amend subdivision (1)(c) of section 76-2,120 which defines "residential real property" for the purposes of written seller disclosure statement requirements in order to provide that "residential real property" also means real property "which is being used primarily for residential purposes." This section would amend subsections (5) and (7) of section 76-2,120 to provide that "On or before the effective date of any contract which binds the purchaser to purchase the real property, the seller shall update the information on the disclosure statement whenever the seller has knowledge that information on the disclosure statement is no longer accurate." This section would amend subsection (6) of section 76-2,120 to provide that (a) this section shall not apply to a transfer of newly constructed residential real property which has never been occupied, and (b) this section shall not apply to a transfer from a third-party relocation company if the third-party relocation company has provided the prospective purchaser a disclosure statement from the most immediate seller unless the most immediate seller meets one of the exceptions set out in this section, and if a third-party relocation company fails to supply a disclosure statement from its most immediate seller on or before the effective date of any contract which binds the purchaser to purchase the real property, the third-party relocation company shall be liable to the prospective purchaser to the same extent as a seller under this section. This section would insert a new subsection (10) in section 76-2,120 to provide that a licensed salesperson or broker shall not be required to verify the accuracy or completeness of any disclosure statement prepared pursuant to this section, and the only obligation of a buyer's agent pursuant to this section is to assure that a copy of the statement is delivered to the buyer on or before the effective date of any purchase agreement which binds the buyer to purchase the real property.

AGENCY RELATIONSHIPS

Section 2 would amend section 76-2403 to restructure and clarify the language in the definition of "adverse material fact."

Section 3 would amend section 76-2407 which defines the term "client" for purposes of agency relationship statutes in order to provide that "client" also means "the seller, landlord, buyer, or tenant to whom the licensee owes the duty as set forth in sections 76-2401 to 76-2430" (the agency relationship statutes).

Section 4 would amend section 76-2417 to change occurrences of "customer" to "buyer, tenant, or prospective buyer or tenant."

Section 5 would amend section 76-2418 to change occurrences of "customer" to "seller, landlord, or prospective seller or landlord."

Section 6 would amend section 76-2419 to provide that "A dual agent shall disclose to both clients all adverse material facts actually known by the licensee."

Section 7 would amend subsection (2) of section 76-2421 to provide that "when a buyer or tenant has a brokerage relationship under sections 76-2401 to 76-2430 without a written

agreement,” no other licensee shall be required to make the written disclosures required by this section. This section would amend subsections (3) and (4) of section 76-2421 to provide that before engaging in broker activities, a licensee who is working as an agent or subagent of the seller or landlord with a buyer or tenant not represented by a licensee or who is working as an agent or subagent of the buyer or tenant with a seller or landlord not represented by a licensee shall provide a written disclosure to the customer which includes a list of tasks that the agent acting as an agent or subagent “may” perform (rather than “intends to” perform) with the customer. This section would insert a new subsection (6) in section 76-2421 to provide that a licensee shall not be required to give the written disclosures required by this section to a business entity when such entity is purchasing, leasing, or selling real property (a) on which there are five or more residential dwelling units, (b) which is subdivided for five or more residential dwelling units, or (c) any portion of which is zoned or assessed as commercial or industrial property.

Section 8 would amend subsection (1) of section 76-2422 to provide that “A copy of a written agreement for brokerage services shall be left with the client or clients.” This section would amend subsections (2) and (3) of section 76-2422 to provide that a written agency agreement shall include “a fixed date of expiration of the agreement.” This section would amend subsection (4) of section 76-2422 to provide that a designated broker intending to act as a dual agent shall obtain the written “consent” rather than “agreement” of the seller and buyer or landlord and tenant. This section would further amend subsection (4) to provide that if a licensee is acting as a dual agent with regard to a specific property, the seller and buyer or landlord and tenant shall confirm in writing the dual-agency status and the party or parties responsible for paying any compensation prior to the time a contract to purchase or a lease is entered into.

Section 9 would amend section 76-2426 of the agency relationship statutes which provides in subsection (3) that a licensee who is serving as a limited agent of a client shall not be liable for a misrepresentation of any subagent unless the licensee knew or should have known of the misrepresentation. This section would repeal language in this subsection which provides: “This section shall not limit the liability of a designated broker for a misrepresentation by an affiliated licensee under his or her supervision.”

NEBRASKA REAL ESTATE LICENSE ACT

Section 10 would amend subdivision (2) of section 81-885.01 to change “a fee, a commission, or any other valuable” consideration to “any form of compensation or” consideration in the definition of “broker.” This section would amend the definition of “designated broker” in subdivision (4) of section 81-885.01 to mean a broker “who has full authority to conduct the real estate activities of a real estate business.” This section also would amend this definition to provide that “In a sole proprietorship, the owner, or broker identified by the owner, shall be the designated broker.” This section further would amend this definition to provide that “The designated broker shall also be responsible for supervising the real estate activities of any associate brokers or salespersons”. This section would amend the definition of “inactive broker” and “inactive salesperson” in subdivisions (5) and (7) of section 81-885.01 to provide that these definitions include a broker or salesperson, respectively, whose “license has been placed on inactive status under statute, rule, or regulation”. This section would insert a new subdivision (15) in section 81-885.01 to provide a new definition: “distance education” to mean “courses in which instruction does not take place in a traditional classroom setting, but rather

through other media by which instructor and student are separated by distance and sometimes by time”. This section would insert a new subdivision (16) in section 81-885.01 to provide another new definition: “regulatory jurisdiction” to mean “a state, district, or territory of the United States, a province of Canada or a foreign country, or a political subdivision of a foreign country, which has implemented and administers laws regulating the activities of a broker.”

Section 11 would amend section 81-885.03 to change any “valuable” consideration to any “form of compensation or” consideration.

Sections 12 and 13 would amend sections 81-885.11 and 81-885.12 to make stylistic and technical changes.

Section 14 would amend section 81-885.13 to change “correspondence courses” to “courses delivered in a distance education format”.

Section 15 would amend section 81-885.17 to change resident “state” to resident “regulatory jurisdiction,” and to provide that nonresident licenses shall remain in force “for only as long as the requirements of issuing and maintaining a license are met” rather than “only as long as a reciprocal agreement is in effect between this state and the resident state of the nonresident licensee.”

Section 16 would amend section 81-885.18 to provide that the “director” of the State Real Estate Commission, rather than the “commission” itself, may refuse to accept an application, and that the applicant is entitled to a hearing by the commission on the refusal within “ninety” days rather than “sixty” days.

Section 17 would amend section 81-885.19 to repeal provisions which prohibit a branch manager from managing more than one branch office.

Section 18 would amend section 81-885.21 to change “commission or fee” to “compensation or consideration.”

Section 19 would amend section 81-885.24 which enumerates unfair trade practices. This section would amend subdivision (1) to provide that it is an unfair trade practice to refuse because of “religion, sex, familial status, or disability” (as well as race, color, national origin, or ethnic group) to show, sell, or rent any real estate for sale or rent to prospective purchasers or renters. This section would amend subdivision (6) to provide that it is an unfair trade practice to accept, give, or charge any “form of” undisclosed “compensation” or “consideration” (rather than “commission” and as well as any rebate or direct profit) on expenditures made for a principal. This section would amend subdivision (8) to provide that it is an unfair trade practice to accept “any form of compensation or” consideration (instead of “a commission or other valuable” consideration) by an associate broker or salesperson from anyone other than his or her employing broker without the consent of his or her employing broker.” This section would amend subdivision (16) by repealing provisions which make it an unfair trade practice to accept “employment or compensation for appraising real estate contingent upon the reporting of a predetermined value or issuing an appraisal report on real estate in which he or she has an

undisclosed interest.” This section further would amend subdivision (16) to provide that it is an unfair trade practice to violate any provision of sections 76-2401 to 76-2430 (agency relationship statutes). This section would amend subdivision (18) to make it an unfair trade practice to provide “any form of” compensation “or consideration” (rather than pay “a commission or” compensation) to any person for performing the services of a broker, associate broker, or salesperson who does not have a license unless such person is a nonresident who is licensed in his or her “resident regulatory jurisdiction” (rather than “state of residence”) or “a citizen and resident of a foreign country which does not license persons conducting the activities of a broker and such person provides reasonable written evidence to the Nebraska broker that he or she is a resident citizen of that foreign country, is not a resident of this country, and conducts the activities of a broker in that foreign country”. The bill would amend subdivision (30) to make it an unfair trade practice to induce a person to transfer an interest in real property, or to discourage another person from purchasing real property, by representing that a change has occurred or will or may occur in the composition with respect to “ethnic group, familial status, or disability” (in addition to “religion, race, color, national origin, or sex” and instead of “age or marital status”) of the owners or occupants in the block, neighborhood, or area.

Section 20 would amend section 81-885.29 to correct a use of “censoring” rather than “censuring.”

Section 21 would amend section 81-885.33 to repeal a requirement that a broker must be “residing” in this state, as well as licensed in this state, in order to sell or offer for sale any real estate in a subdivision.

Section 22 would amend section 81-885.34 to clarify the required provisions which must accompany an application for a subdivision certificate.

Section 23 would amend section 81-885.40 to provide that failure by any person to comply with sections regarding subdivision of real estate (sections 81-885.33 to 81-885.39) shall render any contract “arising out of contacts between the purchaser and subdivider within this state” void and unenforceable and any money paid under such contract to the “subdivider” (rather than “certificate holder”) may be recovered in a court action.

Section 24 would amend section 81-885.45 to provide that any person or subdivider acting as a broker, salesperson, or subdivider without having first obtained the required license or “subdivision certificate” or while his or her license or “subdivision certificate” is under suspension shall be guilty of a Class II misdemeanor (Maximum: 6 months, \$1,000, or both; Minimum: none).

Sections 25 and 27 would amend sections 81-885.51 and 81-885.53 to repeal obsolete language regarding continuing education.

Section 26 would amend section 81-885.52 to (1) provide that the Nebraska Real Estate Commission shall certify the number of hours to be awarded for participation in an approved continuing education activity, based upon “criteria prescribed by rule and regulation of the commission,” as well as based upon contact or classroom hours, (2) provide that the commission

“may” (rather than “shall”) certify the number of hours to be awarded for successful completion of a “course delivered by a distance education format,” based upon “criteria prescribed by rule and regulation of the commission,” as well as based upon the number of hours which would be awarded in an equivalent classroom course or program, and (3) change terminology “correspondence course or program of independent study” to “course delivered in a distance education format.”

Section 28 would provide repealers.

Explanation of amendments, if any:

The committee amendments would insert a modified version of the provisions of LB 871:

WRITTEN SELLER DISCLOSURE STATEMENTS

The committee amendments would further amend section 76-2,120 (section 1 of LB 863, as introduced) which currently requires each seller of residential real property to provide the purchaser with a written disclosure statement of the real property’s condition. The committee amendments would amend subdivision (6)(f) of section 76-2,120 to provide that the requirements of this section shall not apply to a transfer from one “or more co-owners” (rather than simply from one “co-owner”) to one or more other co-owners.

NEBRASKA REAL ESTATE LICENSE ACT

The committee amendments would insert and amend section 81-885.55 of the Nebraska Real Estate License Act which currently requires every active real estate licensee to have errors and omissions insurance coverage and which currently requires the State Real Estate Commission to make errors and omissions insurance available to all licensees by contracting with an insurer for a group policy. The committee amendments would amend subsection (3) of section 81-885.55 to provide that the errors and omissions insurance requirement of this section shall not apply during any year for which the commission is unable to obtain errors and omissions insurance coverage at a reasonable premium not to exceed “two” hundred dollars (rather than not to exceed “one” hundred dollars).

Senator David M. Landis, Chairperson